IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
APPEAL NO.1057 OF 2005
IN
ARBITRATION PETITION NO.66 OF 1991
IN
AWARD NO.172 OF 1990

Padamsey Khimji Chheda & anr. .. Appellants

v/s.

Laxmichand Liladhar & ors. .. Respondents

Mr.Chirag Balsara i/by M/s.Harakhchand & Co.for the appellants.

Mr.Gaurav Joshi i/by M/s.Hariani & Co. for the respondents.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 29th November, 2005

P.C.

After having heard the learned counsel for the appellants, we are satisfied that no interference is called for in the impugned order dated 26th September, 2005. The petitioner Nos.1,2 and 3 and the respondent No.2 died long back. Their legal representatives were not brought on record within time and as a result thereof, the arbitration petition abated in respect of the deceased parties. Since the rights of the surviving parties were inseparable with the rights of the deceased parties, the learned Single Judge in the impugned order held that the petition has abated in its entirety. We find no infirmity in the said order.

2. However, we are informed that chamber summons has been taken out by the legal representatives of the deceased-petitioners for setting aside the abatement and the said chamber summons is pending. We observe that in case the said chamber summons is granted by the learned Chamber Judge and the abatement in respect of the deceased-petitioners and deceased-respondent No.2 is set aside, then in that event, the impugned order dated 26th September, 2005 shall be rendered ineffective and the arbitration petition No.66 of 1991 shall be restored to file for fresh consideration in accordance with law.

3. With the aforesaid observations, the appeal is dismissed.

4. Needless to say that impugned order shall have no bearing on the consideration of the chamber summons and all contentions in the chamber summons are kept open to be agitated before the learned Chamber Judge.

(R.M.LODHA, J.)

(D.G.KARNIK, J.)